

1 Counsel listed on next page
2
3
4
5

6 UNITED STATES DISTRICT COURT
7 NORTHERN DISTRICT OF CALIFORNIA
8 SAN JOSE DIVISION

9
10 DAVID HALTERMAN,

11 Plaintiff,

12 v.

13 LEGATO SOFTWARE, a Division of EMC
14 Corporation; EMC CORPORATION, dba
EMC PERIPHERALS, INC., and DOES 1-X,

15 Defendants.

16 Case No. C04-2660 JW
17
18
19
20
21
22
23
24
25
26
27
28

**STIPULATION AND [PROPOSED]
ORDER SHORTENING TIME TO
HEAR EMC CORPORATION'S
MOTION TO QUASH PLAINTIFF'S
SUBPOENA TO THIRD-PARTY
PRICEWATERHOUSECOOPERS
CIV. L.R. 6-2(a)**

1 KATHRYN BURKETT DICKSON (State Bar No. 70636)
2 DICKSON – ROSS LLP
3 1970 Broadway, Suite 1045
4 Oakland, California 94612
5 Telephone: (510) 268-1999
6 Facsimile: (510) 268-3627

7
8 DAVID ANGLE (admitted *Pro Hac Vice*)
9 ANGLE & ANGLE LLC
10 1920 13th Street, Suite C
11 Boulder, Colorado 80302
12 Telephone: (303) 443-2200
13 Facsimile: (303) 443-2229

14
15 **Attorneys for Plaintiff**
16 **David Halterman**

17 GARY R. SINISCALCO (State Bar No. 64770)
18 MICHAEL D. WEIL (State Bar No. 209056)
19 ORRICK, HERRINGTON & SUTCLIFFE LLP
20 The Orrick Building
21 405 Howard Street
22 San Francisco, California 94105-2669
23 Telephone: 415-773-5700
24 Facsimile: 415-773-5759

25 LYNNE C. HERMLE (State Bar No. 99779)
26 ORRICK, HERRINGTON & SUTCLIFFE LLP
27 1000 Marsh Road
28 Menlo Park, California 94025-1021
Telephone: 650-614-7400
Facsimile: 650-614-7401

17 LEANNE FITZGERALD (admitted *Pro Hac Vice*)
18 EMC CORPORATION
19 2350 West El Camino Real
20 Mountain View, CA 94040

21
22 **Attorneys for Defendant**
23 **EMC Corporation**

24
25
26
27
28

1 PURSUANT TO LOCAL RULE 6-2(a), Plaintiff David Halterman and Defendant
2 EMC Corporation (collectively, “the parties”) stipulate as follows:

3 WHEREAS, on August 12, 2005, plaintiff Halterman served on third-party
4 PricewaterhouseCoopers (“PwC”) a subpoena to produce records relating to PwC’s audits of
5 Legato Systems, Inc. (“Legato”) for the years 2000, 2001 and 2002;

6 WHEREAS, plaintiff’s subpoena, attached hereto as Exhibit A, requests
7 production of records by August 29, 2005;

8 WHEREAS, the parties’ counsel met and conferred regarding the subpoena, but
9 could not come to a resolution;

10 WHEREAS, EMC Corporation filed, or will file, a motion to quash the subpoena
11 on Friday, August 19, 2005;

12 WHEREAS, the Court’s October 26, 2005 Scheduling Order and August 15, 2005
13 order set the discovery cut-off for non-expert discovery on September 14, 2005;

14 WHEREAS, the parties have scheduled other discovery related matters that would
15 interfere with having a hearing on a Tuesday between this date and September 14, 2005;

16 WHEREAS, if the Court denies EMC’s motion and PwC produces the requested
17 information, plaintiff may want to provide this information to his accounting expert(s) to include
18 in a supplemental expert report or mark as an exhibit during the deposition of EMC’s expert;

19 WHEREAS, the parties have scheduled plaintiff’s accounting experts for
20 deposition in Los Angeles on September 13 and 14, 2005;

21 WHEREAS, the parties have scheduled EMC’s expert’s deposition on September
22 21, 2005;

23 WHEREAS, the Court’s October 26, 2004 Scheduling Order also provides, at
24 paragraph 9, that “an expert witness shall be precluded from testifying about any actions or
25 opinions not disclosed prior to the expert’s deposition. This is to ensure that all factual material
26 upon which an expert opinion may be based and all tests and reports are completed prior to the
27 expert deposition.”

28 WHEREAS, EMC will not waive its right, under paragraph 9, to object to

1 plaintiff's expert relying on any factual material, including the requested PwC documents, after
2 EMC takes the deposition of plaintiff's expert(s);

3 WHEREAS, the last day to file a motion to exclude expert testimony is October
4 10, 2005 for a hearing on November 14, 2005, pursuant to the Court's August 15, 2005 order;

5 WHEREAS, Lynne Hermle, one of EMC's counsel, and Kathy Dickson, one of
6 plaintiff's counsel, are both engaged in the same litigation, unrelated to this case, and have an
7 estimated three week trial set for late September 2005 in the Superior Court for the County of San
8 Mateo;

9 WHEREAS, EMC wishes to have a hearing set before the date set for production
10 of PwC's documents and plaintiff wants to resolve EMC's motion on an expedited basis given the
11 foregoing;

12 IT IS HEREBY STIPULATED by and between the parties to this action through
13 their designated counsel as follows:

14 1. the parties respectfully request that this Court enter an order shortening
15 time for a hearing on EMC's motion to quash plaintiff's August 12, 2005 subpoena served on
16 PwC, as follows:

17 (a) plaintiff's opposition to EMC's motion to quash shall be filed on or
18 noon on
before August 26, 2005;

19 (b) EMC's reply shall be filed on or before August 29, 2005; and
20 (c) EMC's motion to quash shall be heard on August 30,
September 2, 2005 at
10:00 a.m. in Department 5.

22 2. The date for production of the documents requested from PwC pursuant to
23 plaintiff's subpoena shall be extended until seven calendar days after the Court enters an order
24 regarding EMC's motion to quash.

25 //

26 //

27 //

28 //

1 3. EMC shall provide PwC a copy of this Order.
2

3 Dated: August 19, 2005

Respectfully submitted,

4 KATHRYN BURKETT DICKSON
5 DICKSON – ROSS LLP

6 DAVID ANGLE
7 ANGLE & ANGLE LLC

8 By: _____/s/

9 Kathryn Burkett Dickson
10 Attorneys for Plaintiff David Halterman

11 Dated: August 19, 2005

12 GARY R. SINISCALCO
13 LYNNE C. HERMLE
14 MICHAEL D. WEIL
15 ORRICK, HERRINGTON & SUTCLIFFE LLP

16 LEANNE FITZGERALD
17 EMC CORPORATION

18 By: _____/s/

19 Michael D. Weil
20 Attorneys for Defendant EMC Corporation

21 I hereby attest that I have on file all holograph signatures for any signatures indicated by a
22 “conformed” signature (/s/) within this efiled document.

23 By: _____/s/

24 Michael D. Weil
25 Attorneys for Defendant EMC Corporation.

26 IT IS SO ORDERED; *as modified by the court.*

27 Dated: 8/22/05

28 _____*/s/ Patricia V. Trumbull*_____

29 The Honorable Patricia Trumbull
30 United States Magistrate Judge